

SECRET TRIAL OF A MURDER CHARGE.

Mrs. Fleming, Accused of
Poisoning, Is Being Judged
by a Referee.

Other Heirs Contend That She
Killed Her Mother to Se-
cure an Inheritance.

Lawrence Godkin Must Decide If
She Is Guilty and If She Com-
mitted the Crime for Money.

HER CHILDREN ARE ALSO AN ISSUE.

A Romantic and Unusual Proceeding
Which May Determine the Course
of the District-Attorney in the
Criminal Prosecution.

Mary Alice Almont Fleming, nee Living-
ston, is making a vigorous effort, through
her lawyers—Grazz Nathan and John C.
Shaw—to get possession of a part of her
mother's property. The residuary legatee
of Robert Swift Livingston are opposing
her on the ground that Mrs. Fleming had
forfeited all right to this estate about
\$30,000, because, as they allege, she po-
isoned her mother.

Judge Beckman sent the matter to a re-
feree, as it was palpable that many com-
plications would ensue in the progress of
the case. He selected Lawrence Godkin to
try the issues and report upon Mrs. Flem-
ing's application. Five hearings have been
held at Mr. Godkin's office, No. 56 Wall
street, the last on Tuesday. The next is
set for Saturday. The utmost privacy has
been observed, and no reports of the mat-
ter have been published, as Mr. Godkin
shuns the publicity incident to such an af-
fair. Mrs. Fleming is again in the Tomb,
having been returned from Blackwell's
Island, where her last child was born early
in December. She was indicted last Sep-
tember for killing her mother, Mrs. E. M.
Bliss, by giving her clam chowder which,
it is asserted, contained a fatal poison. If
the question of Mrs. Fleming's guilt comes
up before Referee Godkin, the evidence on
which the District-Attorney must rely to
convict her will necessarily be produced. This
would seriously interfere with Dis-
trict-Attorney Follows's plans in the crim-
inal proceedings which are likely to come
up in the near future.

THE UNIQUE PROCEEDING.

Frank Dudley Tansley, one of the law-
yers who is appearing before the referee,
was found at his office in the Times Build-
ing yesterday and prevailed upon to dis-
cuss some features of the case. He said:

"This is altogether an unusual case, in-
volving practically the decision of a crim-
inal charge in a civil proceeding in ad-
vance of the criminal trial. Briefly, this
is the situation: Mrs. Fleming has applied
for an order directing the City Chamber-
lain to pay her \$25,000 as the fund accu-
ruing to her mother's (Mrs. Bliss's) es-
tate. There is some \$30,000 dependent upon the questions arising from
the main inquiry. The Grand Jury of
this county found a true bill against
Mrs. Fleming. The question of her guilt is
the deciding point in the distribution of
these moneys. Under the laws of New
York State, a person committing a murder
for the purpose of securing an inheritance
forfeits that inheritance. The residuary
legatees in this case, some of whom I re-
present, can become sharers in this fund
only on the conviction of Mrs. Fleming for
such murder. She will, if the legatee
raise the issue by opposing her present
position, be subjected to another trial
before the Supreme Court or a referee
appointed thereby, wherein the question of
murder and the intent of the accused will
be decided for the purpose of directing
where the property involved in the petition
will be distributed. Thus two entirely dif-
ferent courts pass upon the question for
different purposes."

"Besides that, the legatees in the civil
action must establish an element which the
criminal court does not have occa-
sion to decide—namely, was the murder
for the purpose of obtaining the inheri-
tance?"

"Being a poisoning case, expert testi-
mony will undoubtedly be introduced and
a bitter controversy follow. The facts that
the victim and the alleged perpetrator of
the crime are women, that a large sum is
affected by the decision, that the grim
shadow of the electrical chair hovers in
the background, and that Mrs. Flem-
ing has had a past of romantic and en-
grossing variety combine to make this a
cause celebre."

SIDE ISSUES OF THE TRIAL.

"The recent poisoning trials have been
sensational, and the accused have been
found guilty even though the evidence
was largely circumstantial and strenuously
contested by legal advocates of note and
acknowledged ability. Of course in the
Carlyle Harris, Holmes and Dr. Buchanan
cases the accused was a man. In this case
the prisoner is a woman, and a woman
who has exerted potential influence over
the lives of many men. Still, if the matter
is adjudicated before an eminent and un-
emotional referee, instead of a jury of
twelve men of varying degrees of suscep-
tibility, the result may be the same as
in the cases of Harris, Buchanan and
Holmes. The legitimacy of Mrs. Fleming's
children, four of whom are living, is also
an issue, and, in short, many curious
chapters in several events will be laid
bare, as it looks now."

Grazz Nathan and John C. Shaw, the
attorneys for Mrs. Fleming, claim that
their client never can be convicted, and
that there is not a scintilla of real evi-
dence to prove her guilt, notwithstanding
the fact that the Grand Jury indicted
her. They welcome the opportunity of
trying the question of her guilt now
instead of waiting until the District At-
torney has had time to prepare for the
criminal prosecution. If the residuary
legatees produce sufficient evidence to win
their contention, the county would be
red the enormous expense of another
poisoning trial, with its big fees for
experts, mileage of witnesses, stenog-
rapher's bills, etc.

THE ESTATE AND THE HEIRS.

The \$30,000 fund in question represents
the estate wherein the residuary legatees,
Elsie Reeder and others, had an interest
in remainder after the termination of the
life estate of Mrs. Fleming's mother. This
legatee, Elsie Reeder, is entitled, it is
claimed, to a share in this fund through
the seventh clause of the will of Robert

Swift Livingston, the father of Mary
Alice Almont Fleming.

Judge Andrews, of the Supreme Court,
has appointed Clarence W. Foster, of No.
34 Nassau street, guardian ad litem for
Florence W. Baker and Beronice W. Baker,
to look after their interests in this applica-
tion of Miss Fleming's. Robert S. Living-
ston, a grandson of Robert Swift Living-
ston, the original owner of the estate, also
opposes Mrs. Fleming's application for a
slice of the fortune.

Those summoned to appear before the
referee are Walter, Grace and Averill
Fleming, the three infant children of Mrs.
Fleming; Mrs. Fleming herself, Clara O. L.
Tucker, Lavinia E. Tapscott, Robert L.
Jenkins, Robert L. Luckey, Robert S. Liv-
ingston, Charles G. Livingston, Herman G.
Weibezahl, Robert Livingston Weibezahl,
Carl Ernest Weibezahl, Annie Frances
Weibezahl, Charles A. Peabody, Jr., George
Livingston Peabody, Julia L. Nourse,
Philip G. Peabody, Corn E. Brown, Rosa
H. Stilson, Henry A. Brown, John Amory
Baker, Florence Baker, Beronice Baker,
Florence Smyth, Le Grand B. Cannon, Elsie
Reeder, George L. Reeder and George H.
Yeaman.

WEIGHED 700, AND HUNGRY

Yonkers Masons Find a Fellow Member
and His Son in a Destitute
Condition.

A unique case for relief came under the
observation yesterday of Stephen T. Bell,
Master of Rising Star Lodge, F. and A. M.,
of Yonkers. Leonard Whetton, of United
Lodge, of Brighton, Ontario, was found in
Yonkers in a destitute condition. Whetton,
who is but thirty-eight years of age, tips
the scales at 715 pounds. He was born in
Canada and at the age of ten weighed 200
pounds. He worked for a time on his
parents' farm, but as his weight increased
he found it impossible to do the work re-

quired on a farm and went into the butcher
business. A few years ago he began going
about the country exhibiting himself from place
to place, and met with fair pecuniary suc-
cess. He went to the Atlanta Exposition and
when it closed came to New York. About a
week ago a man whom Whetton knows
simply as "Professor Morris" brought him
to Yonkers, engaged a small, unoccupied
store in Palladium avenue, and with glaring
lights and loud voice invited the citizens of
the city to view his charge in regular dis-
tinct museum style.

The week was fairly successful, but yester-
day "Professor Morris" could nowhere
be found. Whetton says he has left town
with all the receipts and left him and his
thirteen-year-old son Andrew stranded
there. The Masonic fraternity learned of
his plight and he and his boy have been
cared for.

Leonard Whetton, thirty-eight years old and weighing 715 pounds, who was de-
scribed by a museum manager in Yonkers, N. Y. Some Masons, of whose order
Whetton is a member, found him suffering from cold and hunger, along with his
son, and took care of him.

(Sketches by a Journal Staff artist.)

A Behemoth of Destitution.

He made the statement a sweeping one, he
said, because he was annoyed at the at-
titude assumed by Miss Davis in the case.
Miss Davis then took the stand and testi-
fied that she never owed the dramatist
money for cab fare.

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of us went in a coupe. On that occasion
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"I can't say my memory is very good,"
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The Committee on Ways and Means will
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Cross, head of the special agents, said
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PLANS FOR THE NEW BRIDGE.

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met yesterday afternoon in their offices in the
Emigrant Savings Bank building, No. 49
Chambers street. Majors Strong and
Wurster were the only absentees. After the
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The Commission has received and filed re-
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bone was strained, six of his ribs were
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arm was stretched and he was fearfully
cut about the head, legs and arms. Be-
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FOUR IN ONE COUPE SEAT.

Miss Davis Testified That Mrs.
Carter Had to Sit in Mr.
Belasco's Lap.

The Playwright Blushed, and at the
End of the Session the Passage
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QUARRELS IN "MISS HELYETT" CO.

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introduced the carriage question. Referee
Hall ordered that portion of the evidence
stricken from the record, and an adjourn-
ment was taken until next Monday.

Mr. Belasco was seen at the Herald
Square Theatre and said that he had a
faint recollection of the coupe
ride Miss Davis referred to on the witness
stand, but if any one saw him slip he be-
lieved it was Miss Davis. He said that if
he remembered correctly, Mrs. Leslie Car-
ter, Miss Clement, Miss Davis and himself
started from the theatre, and a coupe had
been sent instead of a carriage, and all four
got inside, but he did not remember how they
all were mixed up. He laughed over the mat-
ter and said that it would never have been
revived in his mind had Miss Davis not re-
ferred to it in her testimony.

Referee Ernest Hall yesterday listened to
another instalment of testimony in the
suit of Actress Kate Davis against David
Belasco and Charles Frohman for \$5,800 for
alleged breach of contract. David Belas-
co was on the stand for the third time.
He had frequently joined the "Miss Hel-
yett" company on the road, he testified, for
the purpose of preserving discipline, which
was threatened by the disobedience of Miss
Davis. At the last hearing Mr. Belasco had
stated on his word of honor that he had
never appeared as a witness in the case of
Liverman Purvolut against Mrs. Leslie
Carter. On cross-examination yesterday he
said that he might have appeared, but did
not remember the incident.

"I can't say my memory is very good